

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>DAVID BILLUPS,</b>	:	<b>Case No. C-1-01-377</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>JUDGE SPIEGEL</b>
	:	<b>MAGISTRATE JUDGE HOGAN</b>
<b>JAMES MCWEENEY, et al.,</b>	:	
<b>Defendants.</b>	:	

**DEFENDANTS' OBJECTION TO PLAINTIFF'S MOTION FOR**  
**"COURT REVIEW OF THE MAGISTRATE'S ORDER"**

Plaintiff filed this action *pro se* on June 7, 2001. (Doc. 1). Thereafter, there has been a long and protracted series of motions, a partial summary judgment, responses, an evidentiary hearing and more. (See Defendants' Supplementary Motion for Summary Judgment p. 2 & 3.) (Doc. 100). Due primarily to Plaintiff's failure to serve Defendants with various motions, including his Motion for Partial Summary Judgment, filed before Defendants were served, Defendants did not oppose various motions filed by him.

Defendants did oppose a second Motion for Summary Judgment filed by the Plaintiff on February 22, 2002. (Doc. 22). Defendants' Opposition was filed on March 20, 2002. (Doc. 30). On September 11, 2002, a Report and Recommendation by the Magistrate Judge denied Plaintiff's Motion for Partial Summary Judgment but also denied Defendants' request for dismissal on all claims. This was adopted by the Court on January 17, 2003. (Doc. 87). A few days later, Defendants moved to set aside the Court's Order and to file a supplementary motion for summary judgment. (Doc. 89). This motion was granted by the Court on April 2, 2003. (Doc. 99). A supplementary motion was timely filed by the Defendants thereafter. (Doc. 100). On May 7, 2003,

Plaintiff moved for an extension to respond to Defendants' Supplementary Motion for Summary Judgment. (Doc. 102). After seeking and being granted an extension to respond, Plaintiff filed his opposition to the motion on May 16, 2003. (Doc. 104). Thereafter, Defendants filed a reply. (Doc. 113).

On June 28, 2003, the Magistrate Judge issued his Order and Report and Recommendation. (Doc. 115). All Defendants with the exception of Lebanon Correctional Institution (LeCI) cashier Audrey Young and Dr. Pedro Obregon the Southern Ohio Correctional Facility (SOCF) Medical Director, were recommended for dismissal. The last page of the R & R contained a notice which said in pertinent part,

"Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific written objections to this Report and Recommendation (R & R) within 10 days after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time."

On August 5, 2003, Defendants timely moved for an extension until August 28, 2003, in which to file objections. (Doc. 116). That motion was granted by notation order the following day. On August 13, 2003, Defendant Young filed a second motion for an extension. (Doc. 119). This, too, was granted by the Court. Throughout this period of time, Plaintiff did not serve on Defendants an objection to the R & R, nor did he object to the extensions that were granted to Ms. Young. On October 6, 2003, more than two months after the deadline for filing objections, Plaintiff sent to Defendants what was apparently intended to be an objection to the R & R, a "Motion for Court Review of the Magistrate's Order". The certificate of service states that the motion was sent to the undersigned counsel on August 6, 2003. (Ex. A). It was not. Although it was filed with the Court on August 11, 2003, (Doc. 118), the envelope in which the motion was contained is postmarked October 4, 2003. (Ex. B). In checking the court docket,

Defendants learned that Plaintiff filed his objection timely, (Doc. 118) but failed to serve Defendants' counsel until two months later. This is now the 16<sup>th</sup> time that Plaintiff has filed a pleading and failed to serve Defendants. (See Doc. 89, in which the other 15 times Plaintiff has failed to serve Defendants are listed) As a result, Plaintiff's objection to the R & R should be stricken and the Court's decision for all Defendants except Dr. Obregon and Ms. Young should be upheld. The Court has granted the remaining two Defendants until November 24, 2003, to present evidence seeking their dismissal. Defendants intend to timely do so.

Respectfully submitted,

JIM PETRO  
Attorney General of Ohio

s/ MARIANNE PRESSMAN  
MARIANNE PRESSMAN (0059512)  
Assistant Attorney General  
Corrections Litigation Section  
1600 Carew Tower, 441 Vine Street  
Cincinnati, Ohio 45202-2809  
(513) 852-3497  
E-Mail: mpressman@ag.state.oh.us

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was forwarded to Plaintiff, David Billups, #211-903, Ross Correctional Institution, P.O. Box 7010, Chillicothe, Ohio 45601, by regular U.S. mail on this 8th day of October, 2003.

s/ MARIANNE PRESSMAN  
MARIANNE PRESSMAN (0059512)  
Assistant Attorney General  
Corrections Litigation Section  
1600 Carew Tower, 441 Vine Street  
Cincinnati, Ohio 45202-2809  
(513) 852-3497  
E-Mail: mpressman@ag.state.oh.us